EXHIBIT B

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Subject: Activity in Case 1:03-cv-11661-NG Capital Records, Inc. et al v. Alaujan Order on Motion for Miscellaneous Relief

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United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was entered on 7/22/2009 at 7:21 AM EDT and filed on 7/22/2009

Case Name: Capital Records, Inc. et al v. Alaujan
Case Number: 1:03-cv-11661
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Docket Text:
Judge Nancy Gertner: Electronic ORDER entered denying [853] Motion to Suppress. "The Defendant raises a number of arguments why MediaSentry's monitoring was illegal under state and federal wiretap laws, as well as state licensing requirements for private investigators. See Mass. Gen. L. ch. 272, s. 99(A); Mass. Gen. L. ch. 147, s. 22. Given that MediaSentry did not conduct its monitoring from Massachusetts, does not maintain a presence in the state, and the computer on which MediaSentry detected Tenenbaum's file-sharing was located in Rhode Island at the time, Massachusetts' wiretapping and licensing provisions would not seem to reach the conduct at issue at all. See Connelly Aff. (document # 866-5); Cox Comm. Subpoena Resp. (document # 866-9). Regardless of which state's licensing requirements are invoked, the Court previously considered a similar motion to strike in London-Sire Records, Inc. v. Arista Records LLC, Case No. 04-12434, holding that "[n]either the rules of evidence nor the Fourth Amendment bar the use of evidence arguably unlawfully obtained by private parties in their private suits." Jan. 9, 2009 Mem. and Order at 3-4 (document # 230). Tenenbaum's remedy for a search he believes illegal under state laws is not exclusion of this evidence, but a separate action against MediaSentry or its employer under the state statutes he identifies. That leaves only the federal wiretapping provisions. See Electronic Communications Wiretap

Act, 18 U.S.C. 2510 et seq. Here, Tenenbaum proposes a difficult analogy when he compares MediaSentry's activities to illegal eavesdropping. The Defendant made his computer's "shared folder" visible to the world of KazaA users, for the very purpose of allowing others to view and download its contents -- an invitation that MediaSentry accepted just as any other KazaA user could have. The electronic communications that ensued were conducted with the consent of both parties. As a result, it is bizarre indeed to describe MediaSentry's decision to examine and record its counterpart's IP address as eavesdropping, as though federal law prohibited MediaSentry from determining where the data sent to it from Tenenbaum's computer originated. It is as if one received a letter in the mail, but was not allowed to look at the return address.This principle makes no more sense on the internet than in the non-digital world, and it is not encompassed by the Act. The type of IP information transmitted by KazaA and recorded by MediaSentry is accessible to almost anyone with a computer. Even if viewed as an "interception" -- a characterization that the Court accepts here only as a hypothetical -- MediaSentry's monitoring activities fall within the statute's safe harbor for interceptions by a party to the communication. See 18 U.S.C. 2511(1), 2511(2)(d); see also R.I. Stat. s. 12-5.1-1 et seq. (one-party consent rule parallel to the federal statute). Tenenbaum transmitted the digital files at issue to MediaSentry, making it a party to the communication, and he has not shown here that any interception occurred with the purpose of committing a "criminal or tortious act" under state or federal law. Id.; see also Order on Motions in Limine, Capitol Records Inc. v. Thomas-Rasset, Case No. 06-1497 (D. Minn. June 11, 2009). The Motion to Suppress MediaSentry Evidence [853] is DENIED." (Gaudet, Jennifer)

1:03-cv-11661 Notice has been electronically mailed to:

Matthew H. Feinberg mattfein@feinberg-kamholtz.com, rgifford@feinberg-kamholtz.com

Matthew A. Kamholtz mattkamh@feinberg-kamholtz.com

Michael A. Kehoe mak@psh.com

Kenneth J. Parsigian kparsigian@goodwinprocter.com

Charles J. DiMare cjdimare3152@aol.com, cdimare@stuaf.umass.edu

Mary T. Sullivan msullivan@segalroitman.com, jstein@segalroitman.com, sgillin@segalroitman.com

Terence K. Ankner tka@anknerlaw.com

Ronald N. Whitney rwhitneylaw@hotmail.com

John J. Regan jreganesq@aol.com

Daniel T. Doyle ddoylepc@comcast.net

Mark A. Walsh mark.walsh@dl.com

Donna L. Conley countess2@msn.com

Seth M. Yurdin syurdin@hotmail.com

Daniel J. Cloherty dcloherty@dwyercollora.com, loconnor@dwyercollora.com, morr@dwyercollora.com, vsteinberg@dwyercollora.com

Charles Nesson nesson@law.harvard.edu, nesson@law.harvard.edu, imeister@cyber.law.harvard.edu, mharding@law.harvard.edu, ray@beckermanlegal.com

Raymond Sayeg, Jr rsayegesq@aol.com

Theodore G. Fletcher law@tgfletcher.us

Simon B. Mann smann@arnowitzandgoldberg.com

Eve G. Burton eve.burton@hro.com, eve.burton@hro.com

Laurie Rust laurie.rust@hro.com, della.grant@hro.com, joel.rayala@hro.com

Timothy M. Reynolds timothy.reynolds@hro.com, timothy.reynolds@hro.com, anne.allen@hro.com

Michelle Bennett michelle.bennett@usdoj.gov

Debra B. Rosenbaum drosenbaum@law.harvard.edu

Jennifer L. Dawson jdawson@law.harvard.edu

James E. Richardson jrichardson@law.harvard.edu

Matthew C. Sanchez msanchez@law.harvard.edu

Anna V. Volftsun avolftsun@law.harvard.edu

Victoria L. Steinberg vsteinberg@dwyercollora.com

Free Software Foundation law@tgfletcher.us

1:03-cv-11661 Notice will not be electronically mailed to:

Charles M. MacLean
869 Concord Street
Framingham, MA 01701

Charmaine M. Blanchard
Law Offices of John J. McGlynn, Jr.
4 Norman Street
Salem, MA 01970

Diane Briggs
7 Ponkapoag Way
Canton, MA 02021

Diane Cabell
1587 Massachusetts Avenue
Cambridge, MA 02138

Douglas T. Evans
58 Main Street
Topsfield, MA 01983

George W. Gray , Jr
Law Office of George W. Gray Jr.
110 Haverhill St.
Suite 315
Amesbury, MA 01913

John Palfrey
1587 Massachusetts Avenue
Cambridge, MA 02138

John J. McGlynn , Jr
Law Office of John J. McGlynn, Jr.
4 Norman Street
Salem, MA 01970

Katheryn J. Coggon
Holme Roberts & Owen LLP
Suite 4100
1700 Lincoln Street
Denver, CO 80203-4541

Matthew Oppenheim
The Oppenheim Group
7304 River Falls Drive

Potomac, MD 20854

Michael Fitzgerald
11 Pineridge Road
Wilmington, MA 01887

Michael Manzi
Law Office of Michael Manzi
59 Jackson Street
Lawrence, MA 01840

Paul A. Shneyer
Shneyer & Associates Ltd.
1991 Broadway OFC 2
New York, NY 10023-5828

Steven Karol
Karol & Karol
424 Adams Street
Milton, Ma 02186

Yevgeniya Shnayder
31 Star Road
Newton, MA 02465